



Oregon Department of Environmental Quality

April 15, 2016

Notice of Proposed Rulemaking

Ballast Water Management 2016

Overview

Short summary

Ballast Water Rules

DEQ proposes the Oregon Environmental Quality Commission (EQC) approve the proposed ballast water management rule amendments. These amendments would further enhance DEQ's ability to prevent the transport and introduction of aquatic invasive species (AIS) from commercial shipping activities to state waters, thereby protecting Oregon from potentially harmful economic and environmental impacts. The proposed rule amendments are in response to recent changes in federal regulations and aim to ensure adequate AIS prevention strategies for Oregon ports.

The proposed rules establish greater protection for Oregon water resources and aquatic ecosystems in two ways. First, the rules close a management gap associated with residual ballast water and sediments in empty ballast tanks that represents a risk for introducing aquatic invasive species when vessel operators must ballast and subsequently de-ballast from empty ballast tanks while in state waters. Second, the rules address concerns that recent federal regulatory changes will replace a strategy that has proven to be highly protective for low-salinity ports (like those in Oregon) with reliance upon first generation shipboard treatment technologies that under some circumstances could be less protective of Oregon ports. Specifically, the rule would retain ballast water exchange requirements for a subset of vessel arrivals that represent a high-risk for introducing AIS to Oregon.

Under current state rules, vessel operators are no longer required to conduct ballast water exchange practices following implementation of federal discharge standards that generally require use of new shipboard treatment technology. The proposed rules would retain ballast water exchange requirements, in addition to meeting federal treatment requirements, for high-risk voyages that had sourced ballast from low-salinity environments. The EPA established a policy to retain ballast water exchange (a.k.a. 'exchange plus treatment') under the National Vessel General Permit as a strategy to protect freshwater ports from further damages by AIS, but only required this management model for voyages entering the Great Lakes. Retaining ballast exchange for high-risk voyages would serve as an important interim strategy to protect Oregon's low-salinity ports during a significant transition that depends upon the reliability of new technologies that have lacked rigorous testing. As proposed, the rule would be repealed after eight years unless DEQ and the EQC determine that technology reliability and efficacy of federal shipboard treatment policies remain inadequate. In the event that

these rules are adopted by Oregon, it is anticipated that Washington Department of Fish and Wildlife will seek to adopt comparable rules for vessels operating in the Columbia River.

The proposed rules do not involve fees, additional equipment requirements or significant administrative efforts in order to comply. Therefore, under normal operating circumstances, these rules will not have any significant negative economic impacts, either direct or indirect.

DEQ Noise Regulations

This rulemaking includes a second element. As an administrative action intended to improve the clarity of its rules, DEQ has included rulemaking on a second topic in this rulemaking. This action involves DEQ's noise control regulations, found at OAR 340 division 35.

In 1991 the Oregon Legislature withdrew all funding for implementing and administering DEQ's noise regulations. (See OAR 340-035-0110.) DEQ therefore ended its noise control program, although the noise control regulations remain in effect. In response to budget reductions, DEQ no longer conducts a noise control program or enforces the noise control regulations. DEQ has no funding or program to respond to noise complaints, to provide advice about noise issues or to interpret the noise regulations. Local governments may choose to enforce the noise regulations.

The changes DEQ is proposing for the noise regulations are purely administrative to make it easier for the public to access information about these rules. These changes do not indicate any change in DEQ policy or practice concerning the noise regulations. DEQ still does not have a noise control program or have funding or the ability to enforce, apply or interpret the noise regulations, or to investigate noise issues or complaints.

The noise control regulations refer to a number of tables and external documents. Currently, those documents are not published with the official version of the rules on the Oregon Secretary of State web page. Instead, DEQ maintains those documents on its own web site.

In this rulemaking DEQ is asking the EQC to approve amendments to the noise regulations that only incorporate directly into the rules the tables and documents the rules already refer to. This will make it easier for users of these rules to find the information they need to interpret and apply the rules. It will also relieve DEQ from the cost and responsibility of maintaining these documents on its web site.

This rule change does not change any content or wording of the noise control regulations. There is no change in the meaning, effect, or application of these rules. There is also no negative fiscal impact to any person or entity from this rule change.

DEQ will therefore ask the EQC to approve these proposed amendments to the division 35 noise control regulations.

Brief history

Oregon first established ballast water management regulations in 2001 to prohibit commercial vessels from discharging ballast to state waters unless the discharge meets specified management criteria. The primary ballast management practice available to mariners has been mid-ocean ballast water exchange. This strategy replaces ballast originally sourced from distant coastal and nearshore port

environments (representing a high-risk for transporting AIS) with lower-risk water sourced from the open ocean. Ballast exchange reduces the risk of transporting non-indigenous species from other freshwater ports to Oregon's freshwater ports in two important ways: by significantly reducing the number of near-shore organisms in discharged ballast (propagule pressure) and by causing high mortality to any remaining freshwater or brackish organisms in the tanks via osmotic shock. In addition to other management options, such as retaining ballast while in port or using a municipal water supply, using a U.S. Coast Guard (USCG) approved shipboard ballast water treatment system is also identified as an acceptable management method. However, until recently, technology was still in development and the USCG had not established numerical standards or technology certification criteria to guide implementation of treatment-based strategies. In recent years Oregon has been closely monitoring the development of ballast discharge standards at state, federal and international levels to determine whether state-specific discharge standards are necessary, or whether the adoption of federal standards is adequately protective of Oregon waters.

In 2009, the Oregon Legislature clarified authority for the EQC to adopt by rule standards and procedures to minimize the risk of introducing AIS from ballast discharged to state waters (HB 2714). Moreover, the Legislature created the Shipping Transport of Aquatic Invasive Species Task Force (STAIS). STAIS represents a range of stakeholders and makes recommendations to the state on matters related to ballast water management for commercial vessels transiting Oregon waters.

Based on developments at the international and federal level, STAIS recommended in 2010 that Oregon wait for final determination of federal ballast water discharge standards before deciding whether state specific discharge standards are necessary. At that time, federal authorities were considering whether to adopt standards for the numerical limits on living organisms in discharged ballast comparable to those California established in 2007 or the considerably less protective standards established by the International Maritime Organization's (IMO) 2004 Ballast Water Management Convention.

The 2012 USCG final rule on ballast water management established numeric standards for discharging living organisms in ballast discharge by adopting the less protective standards established by the IMO. The United States Environmental Protection Agency (EPA) also adopted the less protective IMO standards within the 2013 NPDES Vessel General Permit, however, the U.S. 2nd Circuit Court of Appeals ruled in October 2015 that the EPA's reliance on the IMO/USCG standard was arbitrary and capricious.

Of particular interest to Oregon, the EPA noted in issuing the 2013 Vessel General Permit that relying upon first generation shipboard treatment systems certified to meet the IMO/USCG standard may not represent an improvement over ballast water exchange for protecting freshwater ports from further aquatic invasive species damages. Rather, for voyages that source ballast from low-salinity environments, replacing ballast water exchange with shipboard treatment systems could increase the chance of transporting and releasing non-indigenous species that represent a high-risk for invasion to freshwater ecosystems.

To achieve an adequate protection level, the EPA proposed retaining ballast exchange requirements, in addition to imposing the new ballast treatment standards, for ocean-going vessels that enter the Great Lakes/St. Lawrence system with low-salinity water in their ballast tanks. Based upon similar concerns, DEQ submitted comments to EPA strongly encouraging the adoption of 'exchange plus treatment' for all freshwater harbors in the U.S, and in particular the low-salinity ports in Oregon.

Unfortunately, the EPA issued the final permit with ‘exchange plus treatment’ requirements only for vessels operating in the Great Lakes. As a result of the implementation of these federal policies, USCG certified shipboard treatment systems can now be used in place of ballast water exchange to meet ballast water management requirements under OAR 340-143-0050.

In response to the federally mandated changes in ballast water management, the states of Maine, Rhode Island, New York, Minnesota and Michigan established 401 certification conditions to the 2013 EPA Vessel General Permit that require all vessels to retain ballast water exchange in addition to meeting federal discharge standards, regardless of ballast water origin salinity levels. Also, Canadian authorities announced the intention of adopting the IMO D-2 discharge standards, but with a more stringent provision that retains ballast water exchange practices for vessels discharging ballast to low-salinity harbors, including those of the Pacific Coast, such as the Fraser River.

In response to the recent changes, the DEQ has been working with the STAIS task force to evaluate efficacy of the federal discharge standards for protecting Oregon waters. Task force stakeholders sought consensus recommendations based on regional consistency with neighboring states, compatibility with federal regulations, and goals for preventing vessel-mediated AIS introductions to Oregon.

Regulated parties

Ballast Water

The proposed amendments to OAR 340-143 do not change the regulated parties.

Noise Regulations

The noise control regulations apply to a wide range of parties that generate noise. However the proposed amendments do not change the regulated parties or the compliance requirements in any way.

Request for other options

During the public comment period, DEQ requests public comment on whether to consider other options for achieving the rules’ substantive goals while reducing any potential negative economic impact on business resulting from the rules.

Statement of need

Management of Empty Ballast Tanks

What need would the proposed rule address?

The need to reduce the invasive species transfer risk associated with residual ballast water and sediments in ‘empty’ ballast tanks that may be used for ballasting and subsequent de-ballasting while in state waters.

How would the proposed rule address the need?

The proposed rule requires vessel operators to conduct a mid-ocean saltwater flush of empty ballast tanks that they want to use for ballasting and subsequent de-ballasting while in port.

How will DEQ know the rule addressed the need?

Mid-ocean saltwater flushing of an empty ballast tank will result in residual water salinity of at least 30 parts per thousand and thereby will significantly reduce the probability for introducing high-risk species to the low-salinity environments of Oregon ports. This minimum salinity criterion can be used for compliance verification purposes.

Retaining Ballast Water Exchange

What need would the proposed rule address?

There are concerns that new management practices established by federal requirements could, under some circumstances, represent a lower efficacy for preventing aquatic invasive species (AIS) transport to low-salinity ports in Oregon than current mid-ocean ballast exchange management practices.

How would the proposed rule address the need?

The rules retain ballast water exchange requirements for a subset of vessel arrivals to Oregon that represent a high risk for transporting AIS.

How will DEQ know the rule addressed the need?

Vessel inspections by DEQ staff, including sampling of ballast tank water for a minimum salinity, provides opportunity to verify compliance with elements of the proposed rule, as well as other ballast management criteria. The ballast water program at DEQ currently has the capacity to inspect approximately 15% of vessel arrivals to Oregon. Inspections are prioritized for vessel arrivals that represent a higher risk for transporting AIS to Oregon waters, such as the vessel arrivals that would be subject to the proposed rule. Compliance verification sampling of vessels subject to the rule, combined with ongoing evaluation of ballast water treatment system efficacy and monitoring for new

non-indigenous species in Oregon waters, will inform DEQ's evaluation of the new rule and a determination of whether it is needed beyond the proposed expiration date in 2025.

Noise Tables

What need would the proposed rule address?

The rules are currently difficult for users to read, interpret and apply because the necessary information contained in tables and reference documents is not published in the same location as the rules.

How would the proposed rule address the need?

The amendments move tables and reference documents from a source that is external to the official published version of the rules and incorporates those documents into the official published version of the rules.

How will DEQ know the rule addressed the need?

The external documents will have been incorporated into the official published version of DEQ's rules.

Rules affected, authorities, supporting documents

Ballast Water Rules

Lead division

Operations Division

Program or activity

Ballast Water Management

Chapter 340 action

Amend OAR 340-143-0005, 340-143-0010, 340-143-0050

Statutory authority

ORS 468.020, 783.620 – 783.640

Statute implemented

ORS 783.620 – 783.640

Legislation

House Bill 2207 (2015)

Other authority

Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA - Section 1205)
(codified as 16 U.S.C. § 4725)

Documents relied on for rulemaking

Document title	Document location
Oregon Task Force on Shipping Transport of Aquatic Invasive Species – Report to the 2015 Legislature	http://www.deq.state.or.us/lq/cu/emergency/staistaskforce.htm
EPA VGP 2013	http://www.epa.gov/npdes/vessels-incident-discharge-permitting-3
Transport Canada Policy Implementation Paper 2012	http://www.oregon.gov/deq/RulesandRegulations/Pages/Advisory/ballast2016.aspx
Briski, E., Gollasch, S., David, M., Linley, R. D., Casas-Monroy, O., Rajakaruna, H., & Bailey, S. A. (2015). Combining ballast water exchange and treatment to maximize prevention of species introductions to freshwater ecosystems. <i>Environmental science & technology</i> , 49(16), 9566-9573.	http://www.oregon.gov/deq/RulesandRegulations/Pages/Advisory/ballast2016.aspx

Bailey, S. A., Deneau, M. G., Jean, L., Wiley, C. J., Leung, B., & MacIsaac, H. J. (2011). Evaluating efficacy of an environmental policy to prevent biological invasions. <i>Environmental Science & Technology</i> , 45(7), 2554-2561.	http://www.oregon.gov/deq/RulesandRegulations/Pages/Advisory/ballast2016.aspx
Briski, E., Allinger, L. E., Balcer, M., Cangelosi, A., Fanberg, L., Markee, T. P. & Regan, D. H. (2013). Multidimensional approach to invasive species prevention. <i>Environmental science & technology</i> , 47(3), 1216-1221.	http://www.oregon.gov/deq/RulesandRegulations/Pages/Advisory/ballast2016.aspx
Gray, D. K., Johengen, T. H., Reid, D. F., & MacIsaac, H. J. (2007). Efficacy of open-ocean ballast water exchange as a means of preventing invertebrate invasions between freshwater ports. <i>Limnology and Oceanography</i> , 52(6), 2386-2397.	http://www.oregon.gov/deq/RulesandRegulations/Pages/Advisory/ballast2016.aspx
Bradie, J. N., Bailey, S. A., Van Der Velde, G., & MacIsaac, H. J. (2010). Brine-induced mortality of non-indigenous invertebrates in residual ballast water. <i>Marine Environmental Research</i> , 70(5), 395-401.	http://www.oregon.gov/deq/RulesandRegulations/Pages/Advisory/ballast2016.aspx
Gollasch, S., David, M., Voigt, M., Dragsund, E., Hewitt, C., & Fukuyo, Y. (2007). Critical review of the IMO international convention on the management of ships' ballast water and sediments. <i>Harmful algae</i> , 6(4), 585-600.	http://www.oregon.gov/deq/RulesandRegulations/Pages/Advisory/ballast2016.aspx
Ruiz, G.M., & Reid, D.L. (2007). Current State of Understanding about the Effectiveness of Ballast Water Exchange (BWE) in Reducing Aquatic Nonindigenous Species (ANS) Introductions to the Great Lakes Basin and Chesapeake. NOAA Technical Memorandum GLERL-142.	http://www.oregon.gov/deq/RulesandRegulations/Pages/Advisory/ballast2016.aspx
Simkanin, C., Davidson, I., Falkner, M., Sytsma, M., & Ruiz, G. (2009). Intra-coastal ballast water flux and the potential for secondary spread of non-native species on the US West Coast. <i>Marine Pollution Bulletin</i> , 58(3), 366-374.	http://www.oregon.gov/deq/RulesandRegulations/Pages/Advisory/ballast2016.aspx

Noise Control Regulations

Lead division

Operations Division

Program or activity

Rulemaking

Chapter 340 action

Amend OAR 340-035-0015, 340-035-0025, 340-035-0030, 340-035-0035, 340-035-0040
340-035-0045

Statutory authority

ORS 467

Statute implemented

ORS 467, 467.030,

Documents relied on for rulemaking

None.

Fee Analysis

This rulemaking does not involve fees.

Statement of fiscal and economic impact

Fiscal and Economic Impact

Ballast Water Rules

This rulemaking amends invasive species prevention practices required of commercial vessels greater than 300 gross tons that intend to discharge ballast water while operating in state waters. Large foreign businesses own and operate the vast majority of affected vessels. The proposed rules do not involve a significant cost of compliance for these foreign businesses and are not expected to have any indirect effects on local businesses that depend on maritime commerce. As proposed, the rules affecting management of empty ballast tanks (340-143-0010) are in essence the same as preexisting federal requirements. And the ‘exchange plus treatment’ requirement is specifically tailored to only target high-risk voyages carrying low salinity ballast water – less than 11% of all vessel arrivals according to DEQ estimates.

Noise Table Rules

This rulemaking makes no wording or substantive change to DEQ’s noise regulations and therefore has no fiscal impact on any person or entity.

Statement of Cost of Compliance

State and federal agencies

Ballast Water Rules

This rulemaking will not require additional resources for the Department of Environmental Quality, nor other state or federal agencies.

Noise Table Rules

This rulemaking makes no wording or substantive change to DEQ’s noise regulations and therefore has no fiscal impact on any person or entity.

Local governments

Ballast Water Rules

These rules would not impose a negative economic impact on local governments. Rather, these rules are intended to protect the general public by preventing the introduction of aquatic invasive species which have caused devastating economic impacts for public and private sector entities in other regions of the country.

Noise Table Rules

This rulemaking makes no wording or substantive change to DEQ's noise regulations and therefore has no fiscal impact on any person or entity.

Public

Ballast Water Rules

These rules would not impose a negative economic impact on the general public. Rather, these rules are intended to protect the general public by preventing the introduction of aquatic invasive species, which have caused devastating economic impacts for public and private sector entities in other regions of the country.

Noise Table Rules

This rulemaking makes no wording or substantive change to DEQ's noise regulations and therefore has no fiscal impact on any person or entity.

Large businesses - businesses with more than 50 employees

Ballast Water Rules

DEQ does not anticipate any significant economic impact for large businesses operating in Oregon as a result of the proposed rules. The proposed rules do not impose fees or require the use or installation of new equipment or management practices for regulated vessels. For those vessel operators that the proposed rule revisions affect, cost of compliance may involve a minor increase in operational costs of shipboard treatment systems if a bypass option is not available for initial uptake of ballast water, prior to conducting mid-ocean ballast exchange.

Noise Table Rules

This rulemaking makes no wording or substantive change to DEQ's noise regulations and therefore has no fiscal impact on any person or entity.

Small businesses – businesses with 50 or fewer employees

Ballast Water Rules

DEQ does not anticipate any significant economic impact as a result of the proposed rules. DEQ's state ballast water management regulations establish a minimum vessel size criteria of less than 300 gross tons with ballast tanks and exemptions for commercial fishing vessels so that no small businesses are subject to these rules. Moreover, the proposed rules do not establish fees or require new operational practices to manage ballast water. Therefore, under normal operational conditions, the rules would not impose significant economic impacts, either directly or indirectly, on any small businesses.

Noise Table Rules

This rulemaking makes no wording or substantive change to DEQ's noise regulations and therefore has no fiscal impact on any person or entity.

a. Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule.	This rulemaking has no fiscal impact on small businesses.
b. Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule.	N/A
c. Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule.	N/A
d. Describe how DEQ involved small businesses in developing this proposed rule.	N/A

How DEQ involved small businesses in developing this rule

Ballast Water Rules

Large companies headquartered outside of Oregon own greater than 95% of the vessels ORS 783.620 through 783.640 regulate. There are a limited number of local businesses that operate regulated vessels, and those that do (ocean going tug and barge operations) have more than 50 employees. To incorporate a broader perspective on potential economic impacts to other non-regulated businesses, DEQ relied on advisory committee members representing the general maritime industry for Oregon ports. This included representatives from the Port of Portland, the Columbia River Steamship Operators Association, Sause Brothers Ocean Towing, and the Western States Petroleum Association.

Noise Table Rules

This rulemaking makes no wording or substantive change to DEQ's noise regulations and therefore has no fiscal impact on any person or entity.

Documents relied on for fiscal and economic impact

None.

Advisory committee

DEQ appointed an advisory committee.

As ORS 183.33 requires, DEQ asked for the committee's recommendations on:

- Whether the proposed rules would have a fiscal impact,
- The extent of the impact, and
- Whether the proposed rules would have a significant impact on small businesses and complies with ORS 183.540.

The committee reviewed the draft fiscal and economic impact statement and its findings are stated in the approved minutes dated 29 February 2016.

The committee did not provide or request additional data to support or refute DEQ's finding of no significant direct or indirect economic impacts. The committee determined the proposed rules would not have a significant adverse impact on small businesses in Oregon.

Housing cost

Ballast Water Rules

As ORS 183.534 requires, DEQ evaluated whether the proposed rules would have an effect on the development cost of a 6,000-square-foot parcel and construction of a 1,200-square-foot detached, single-family dwelling on that parcel. DEQ determined the proposed rules would have no effect on the development costs because the rules only affect commercial vessels discharging ballast water that had been sourced from outside state water and the changes to regulations do not impose significant changes in operational costs or investment.

Noise Table Rules

As ORS 183.534 requires, DEQ evaluated whether the proposed rules would have an effect on the development cost of a 6,000-square-foot parcel and construction of a 1,200-square-foot detached, single-family dwelling on that parcel. DEQ determined the proposed rules would have no effect on the development costs because the changes to the noise rules are administrative only and have no substantive effect.

Federal relationship

Ballast Water Rules

Relationship to federal requirements

ORS 183.332, 468A.327 and OAR 340-011-0029 require DEQ to attempt to adopt rules that correspond with existing equivalent federal laws and rules unless there are reasons not to do so.

To address risks associated with empty ballast tanks, the proposed rules (OAR 340-143-0010) adopt management requirements that are substantively equivalent to federal requirements established under section 2.2.3.6.3 of the 2013 EPA NPDES Vessel General Permit. Adopting these requirements under Oregon law would facilitate compliance verification inspections and enforcement by DEQ staff. These are functions that EPA generally does not have current capacity for conducting for vessel arrivals to Oregon waters.

Proposed rules to retain ballast water exchange practices for a subset of high-risk vessel arrivals (340-143-0050) would add requirements additional to those in federal requirements for vessels calling on Oregon waters. Instead of being able to forego ballast water exchange practices once a vessel is equipped with a federally approved shipboard treatment system, vessels undertaking high-risk voyages would be required to carry out ballast exchange, in addition to meeting numeric discharge standards. The rules are substantively equivalent, however, to federal requirements established under section 2.2.3.7 of the 2013 EPA NPDES Vessel General Permit. That provision requires vessels entering the Great Lakes to retain ballast water exchange practices.

What alternatives did DEQ consider if any?

In addition to a ‘no-action’ alternative, DEQ also considered adopting a state specific ballast water discharge standard that is more protective than what has been established by federal regulations. For example, California’s ballast water discharge standard is roughly 100x more stringent than the federal standard.

In dealing with regulated parties that are mobile entities operating in many jurisdictions, there are many challenges associated with adopting a state-specific discharge standard that is more protective than a federal standard. Besides determination of technology availability to meet the higher standard, it would also likely involve additional equipment investments for vessel operators beyond the federal requirement.

In contrast, the proposed rule is compatible within the framework of implementing federal discharge standards but does not require any additional equipment or technological investments. Rather, it simply requires that under some voyage conditions, vessel operators are required to conduct ballast exchange, the same management practice that has been required for the past 15 years, in addition to meeting the new federal discharge standards.

In order to adequately protect Oregon waterways from aquatic invasive species introductions, the proposed rules were modeled after the existing regulations that EPA developed for protecting the Great Lakes. Scientific studies have shown that the ‘exchange plus treatment’ strategy is highly effective at protecting freshwater ports from the economic, ecological and human health threats that

can be associated with aquatic invasive species. DEQ, in consultation with stakeholders, determined that the strategy adopted for protecting the Great Lakes, and similarly adopted by states of MI, MN, MA, NY, and RI, will be a sufficiently protective strategy for the predominantly low-salinity ports of Oregon.

In the absence of additional prevention strategies targeting high-risk voyages, studies suggest that the new technology based strategies required under federal regulations could, under some circumstances, represent an increased threat for aquatic invasive species compared to ballast water exchange. Therefore, DEQ rejected the ‘no-action’ alternative.

Noise Regulations

Relationship to federal requirements

The proposed amendments make no substantive changes to the rules and therefore do not conflict with or duplicate federal requirements.

What alternatives did DEQ consider if any?

DEQ did not consider any alternatives because the proposed amendments do not make any substantive changes to the rules.

Land use

Land-use considerations

In adopting new or amended rules, ORS 197.180 and OAR 340-018-0070 require DEQ to determine whether the proposed rules significantly affect land use. If so, DEQ must explain how the proposed rules comply with state wide land-use planning goals and local acknowledged comprehensive plans.

Under OAR 660-030-0005 and OAR 340 division 18, DEQ considers that rules affect land use if:

- The statewide land use planning goals specifically refer to the rule or program, or
- The rule or program is reasonably expected to have significant effects on:
 - Resources, objectives or areas identified in the statewide planning goals, or
 - Present or future land uses identified in acknowledged comprehensive plans

To determine whether the proposed rules involve programs or actions that affect land use, DEQ reviewed its Statewide Agency Coordination plan, which describes the DEQ programs that DEQ determined significantly affect land use. DEQ considers that its programs specifically relate to the following statewide goals:

Goal	Title
5	Open Spaces, Scenic and Historic Areas, and Natural Resources
6	Air, Water and Land Resources Quality
9	Ocean Resources
11	Public Facilities and Services
16	Estuarial Resources

Statewide goals also specifically reference the following DEQ programs:

- Nonpoint source discharge water quality program – Goal 16
- Water quality and sewage disposal systems – Goal 16
- Water quality permits and oil spill regulations – Goal 19

Determination

DEQ determined that these proposed rules do not affect land use under OAR 340-018-0030 or DEQ's State Agency Coordination Program.

Stakeholder and public involvement

Advisory committee

Background

DEQ convened the Ballast Water Rulemaking 2016 advisory committee. The committee included representatives from local and regional maritime industry entities, advocacy groups, research institutions, and state, regional and federal agencies. The committee met three times between December and March 2016. The committee's web page is located at:

<http://www.oregon.gov/deq/RulesandRegulations/Pages/Advisory/ballast2016.aspx>

The committee members were:

Name	Representing
Mark Sytsma, Chair	Portland State University
Jas Adams	Willamette University, State Marine Board
Michelle Hollis	Port of Portland
Frank Holmes	Western States Petroleum Association
Ross McDonald	Sause Bros
Hans Meere	EGT, LLC
Fred Myer	Port of Portland
Amanda Hanson	Lower Columbia River Estuary Partnership
Kate Mickelson	Columbia River Steamship Operators Association
Dick Vander Schaaf	The Nature Conservancy
Travis Williams	Willamette Riverkeeper
Rick Boatner	OR Dept. Fish and Wildlife
Nicole Dobroski	CA State Lands Commission
Robyn Draheim	U.S. Fish and Wildlife Service
Michael Pearson	U.S. Coast Guard
Allen Pleus	WA Dept. Fish and Wildlife

Meeting notifications

To notify people about the advisory committee's activities, DEQ:

- Sent GovDelivery bulletins, a free e-mail subscription service, to the following lists:
 - On 10/5/16 and 1/12/16 DEQ sent a one-time notice to members of the Shipping Transport of Aquatic Invasive Species Task Force subscribers to describe how to sign up for advisory committee meeting notices, and
 - People who signed up for the advisory committee bulletin.
- Added advisory committee announcements to DEQ's calendar of public meetings at [DEQ Calendar](#).
- On 1/13/16 and 2/17/16 DEQ provided news release statements announcing advisory committee meeting details
- On 1/13/16 and 2/17/16 DEQ provided notice of meetings and links to committee information through postings on Facebook and Twitter.

Committee discussions

In addition to the recommendations described under the Statement of Fiscal and Economic Impact section above, the committee devoted a significant proportion of its discussion time to the ballast exchange plus treatment proposal. The committee played an instrumental role in identifying a solution that is practicable within the broad framework of global shipping but also locally tailored to address targeted threats to local resources. Specifically, the committee guided the determination to adopt an 'exchange plus treatment' model based off of the EPA Vessel General Permit for the Great Lakes, rather than more stringent models that have been adopted or proposed in other jurisdictions. Generally, committee members representing maritime industry interests believed that the 'exchange plus treatment' strategy proposed here only needs to be required of voyages representing a high-risk for introducing AIS to Oregon waters which is approximately 10.7% of arrivals. This strategy does not need to be applied to all vessel operators discharging ballast. Some other jurisdictions have adopted this strategy.

Although regional consistency is an important guiding objective for most advisory committee members, the committee was recognized that the predominance of low-salinity ports in Oregon compared to neighboring states provides greater incentive for our state to take the initiative to establish this management requirement. Both Washington, for the Columbia River, and California, for the Sacramento River, have suggested that they will be looking to adopt rules that are substantively comparable to what is being proposed by Oregon DEQ.

Moreover, the committee's participation was important in developing detailed exemptions that will make the regulations more adaptable to rapidly evolving shipboard treatment technologies. Meeting minutes and recordings are available from the advisory committee webpage at: <http://www.oregon.gov/deq/RulesandRegulations/Pages/Advisory/ballast2016.aspx>

EQC prior involvement

DEQ shares general rulemaking information with EQC through the monthly Director's Report.

DEQ did not present additional information specific to this proposed rule revision.

Public notice and hearings

Public notice

DEQ provided notice of the proposed rulemaking and rulemaking hearing on April 15, 2016, by:

- Filing notice with the Oregon Secretary of State for publication in the Oregon Bulletin on May 1, 2016
- Notifying the EPA by email
- Posting the Notice, Invitation to Comment and Draft Rules on the web page for this rulemaking; located at:
<http://www.oregon.gov/deq/RulesandRegulations/Pages/2015/ballast2016.aspx>
- Emailing interested parties on the following DEQ lists through GovDelivery:
 - Rulemaking
 - Ballast Water Management
- Emailing the following key legislators required under ORS 183.335:
 - Senator Roblan, Legislative Advisor to the STAIS Task Force
 - Representative McKeown, Legislative Advisor to the STAIS Task Force
 - Senator Edwards, Chair, Environment & Natural Resource Committee
 - Representative Witt, Chair, Agriculture and Natural Resources Committee
- Emailing members of the Task Force on Shipping Transport of Aquatic Invasive Species
- Emailing advisory committee members
- Emailing 75 interested parties on the Pacific Ballast Work Group distribution list
- Postings on Twitter and Facebook
- Posting on the DEQ event calendar: [DEQ Calendar](#)
- Posting on the DEQ Public Notices web page: [DEQ Notices](#)

Public hearings

DEQ plans to hold one public hearing. The information is listed below.

DEQ will consider all written comments received at the hearings listed below before completing the draft rules. DEQ will summarize all comments and respond to comments in the Environmental Quality Commission staff report.

Hearing Information

May 18, 2016
3 – 5 pm
DEQ Headquarters
811 SW 6th Ave., Room EQCA
Portland, OR 97204

Presiding Officer – To be determined

Teleconference Procedure

- Call: 877-873-8017
- When prompted, use ID code: 8623645

Close of public comment period

The comment period will close 4 p.m. on 25 May, 2016.

Accessibility Information

You may review copies of all documents referenced in this announcement at:
Oregon Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR, 97204

To schedule a review of all websites and documents referenced in this announcement, call Rian vanden Hooff, Portland, OR, 503-229-6865. (800-452-4011, ext. 5622 toll-free in Oregon).

Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ, Portland, at 503-229-5696 or call toll-free in Oregon at 1-800-452-4011, ext. 5696; fax to 503-229-6762; or email to deqinfo@deq.state.or.us. Hearing impaired persons may call 711.